

STIPULATIONS

The stipulations of the parties are listed in the Award of the Administrative Law Judge and are adopted by the Appeals Board for this review.

ISSUES

The Administrative Law Judge denied benefits for an alleged work-related injury to the back that claimant contends resulted in back surgery to remove a herniated lumbar disk. The claimant appeals that finding and asks the Appeals Board to review this proceeding. The issues now before the Appeals Board are:

- (1) Whether claimant is entitled to benefits under the Kansas Workers Compensation Act for injury to the low back which allegedly occurred between August 11, 1992 and April 11, 1993, or for an aggravation to the back that allegedly occurred on June 24, 1993.
- (2) If claimant is entitled to benefits for the alleged back injury, the following issues must also be decided:
 - (i) What is the nature and extent of injury?
 - (ii) Is claimant entitled to a period of temporary total disability benefits?
 - (iii) Is the Workers Compensation Fund responsible for any of the award as a result of a pre-existing condition?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds, as follows:

The Award of the Administrative Law Judge entered in this proceeding, denying claimant benefits for the herniated lumbar disk, should be affirmed. The decision of the Administrative Law Judge set forth the facts in detail not necessary to repeat here. The Appeals Board adopts the findings of the Administrative Law Judge that are not inconsistent with those set forth below as its own.

The claimant failed to prove that it is more probably true than not that he sustained a back injury at work that resulted in the herniated lumbar disk. Although it is true claimant sustained injury on August 11, 1992, when he slipped while carrying parts, the principal issue in this proceeding is whether the fall caused or contributed to the herniation of the lumbar disk discovered in April or May of 1993.

The medical evidence presented in this proceeding does not support claimant's contentions. The medical records initially generated as a result of claimant's fall, indicate claimant initially complained of hip pain but denied pain in his back. Claimant's orthopedist, James Joseph, M.D., initially diagnosed strain of the left hip and provided the appropriate treatment. The first complaints of back pain appear in Dr. Joseph's records of November 2, 1992. Dr. Joseph prescribed physical therapy which reportedly helped, and ultimately released claimant to return to work without restrictions on November 16, 1992. At the time of release, the doctor advised claimant to contact him if his problems continued. Claimant did not.

The next round of medical treatment began in April of 1993, when claimant consulted with his family physician. Claimant's family physician referred him to Leon R. LaPointe, M.D., a neurologist, for evaluation on April 21, 1993. Dr. LaPointe's letter to

claimant's family doctor dated April 30, 1993, indicates claimant experienced the onset of low back pain three weeks earlier, after performing outdoor tasks at home. Although claimant's complaints to Dr. Joseph involved the left hip and left lower extremity, the symptoms reported to Dr. LaPointe involved the right buttock and right leg. Dr. LaPointe referred claimant to Dr. Hered, a board-certified neurosurgeon, who performed a diskectomy at L4-5 on May 14, 1993.

Claimant's own medical expert witness, Lawrence Blaty, M.D., is unable to provide an unequivocal opinion that claimant's disk herniation is related to claimant's fall at work or subsequent work activity. Upon learning that Dr. LaPointe had taken a history that claimant experienced the onset of back pain at home after performing outdoor tasks, Dr. Blaty admits he is unable to provide an opinion regarding causation within a reasonable degree of medical probability. Also, Dr. Blaty is unable to provide an opinion regarding the alleged aggravation or accident on June 24, 1993, as claimant apparently forgot to provide the doctor any history of same. The allegations surrounding the alleged accident of June 24, 1993, are unclear. During the regular hearing, claimant's counsel referred to a document from the respondent's records that indicated that claimant fell at work on June 24, 1993. However, claimant did not testify he fell on that date, but indicated that his back pain gradually worsened while he worked that day.

"In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record." K.S.A. 44-501(a).

"'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record." K.S.A. 44-508(g).

Claimant has failed in this burden and, therefore, benefits for the alleged back injury and diskectomy should be denied. This finding renders moot the other issues in this proceeding listed above.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl entered in this proceeding on March 14, 1994, should be, and hereby is, affirmed in all respects; that an award of benefits to the claimant is hereby denied.

The orders of the Administrative Law Judge pertaining to the payment of costs and expenses are hereby adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER _____

RONALD E. BUTLER

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DOCKET NO. 180,007

BOARD MEMBER

BOARD MEMBER

cc: Timothy J. King, Wichita, KS
Eric K. Kuhn, Wichita, KS
Randall C. Henry, Hutchinson, KS
Shannon S. Krysl, Administrative Law Judge
George Gomez, Director